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December 23, 2002

Mr. Brant S. Levine
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2002 DEC 23 P 5:50

Re: MUR 5031

Dear Mr. Levine

On behalf of the Friends of Lane Evans (the "the Committee"), and Samuel M. Gilman as Treasurer, we submit the following response to the Federal Election Commission's ("FEC"'s or "Commission"'s) reason to believe dated September 17, 2002 (the "Complaint").

The Complaint alleges that the 17th District Victory Fund ("Victory Fund"), the Rock Island County Democratic Central Committee ("Rock Island") and the Knox County Committee ("Knox County") made excessive coordinated party expenditures under 2 U.S.C. § 441a(d) ("§ 441a(d) expenditures"). The Committee does not believe that it received the benefit of excessive coordinated party expenditures. Rather, as shown below, it was the belief of the Committee in 1998 and 2000 that expenditures made by the Victory Fund, Rock Island and Knox County qualified as generic party expenditures or exempt party activity and did not need to be treated as § 441a(d) expenditures. The Committee believed that in 1998 the only § 441a(d) expenditures made on its behalf were coordinated expenditures made by the Democratic Congressional Campaign Committee ("DCCC"). While the Committee

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was not obligated to report coordinated party expenditures as contributions, 11 C F R § 104 3(a)(3)(iii), the Committee understood that the DCCC had the authority to make § 441a(d) expenditures totaling \$65,100 (its own limit plus the limit from the Democratic Party of Illinois (the "State Party") that was delegated to the DCCC by the State Party). In fact, to the knowledge of the Committee, as reported in the DCCC's reports to the FEC, the DCCC only expended \$46,434 in § 441a(d) funds, leaving \$18,666 available to be spent in coordinated expenditures on the Lane Evans 1998 campaign. Accordingly, to the knowledge of the Committee, § 441a(d) expenditures made on its behalf in 1998 did not exceed legal limits. The allegations in the Complaint are limited to 1998; the Complaint does not allege any violation concerning activities conducted in 2000.

A. Coordinated Party Expenditures by the Victory Fund

The Victory Fund did not make excessive coordinated party expenditures under 2 U.S.C. § 441a(d). To the contrary, to the knowledge of the Committee, the Victory Fund did not make any § 441a(d) expenditures on behalf of the Committee at all. Rather, the Committee understood that the Victory Fund was undertaking an active GOTV effort during the 1998 campaign for the entire Democratic party ticket, none of which was required to be treated as a § 441a(d) expenditure.

The Complaint alleges that the Victory Fund's activities should be treated as coordinated expenditures under 2 U.S.C. § 441a(d) if such activities were coordinated with the Committee. Complaint at 14 ("Although the Victory Fund has stated that it focused on GOTV activity designed to benefit the entire ticket, there are bases for believing that the Victory Fund may have coordinated its expenditures with the Evans Committee.") This is not a correct statement of the law. Whether the Victory Fund expenditures were required to be treated as § 441a(d) expenditures does not hinge on whether they were coordinated – it depends on the nature of the activities. If the Victory Fund was conducting generic party activity and exempt activity – as we believe that it was – such expenditures did not need to be treated as § 441a(d) expenditures, even if the activities were coordinated. Indeed, at the time of the events in question, the Federal Election Campaign Act ("FECA" or "Act") permitted a party committee to coordinate all of its generic and exempt activity with campaigns without transforming such activity into a § 441a(d) expenditure. 11 C.F.R.

§ 100 23 (coordination regulations not applicable to expenditures by party committees).

To the knowledge of the Committee, all of the Victory Fund's activities were generic or exempt party activities. We understand that the Victory Fund hired the Strategic Consulting Group ("SCG") to train volunteer workers for the Victory Fund. These volunteers then helped with the GOTV efforts of the Victory Fund, including contacting voters, helping with the distribution of materials, putting up yard signs, and carrying out door-to-door canvassing within the 17th Congressional District. The Committee periodically met with the volunteers, briefed them concerning the Committee's activities, and invited them to events of interest within the district; the Committee, however, did not direct these volunteers and understood that all of the Democratic campaigns within the 17th District conducted similar meetings with the volunteers. On numerous occasions, the Committee met with the Victory Fund volunteers together with the representatives of the other Democratic campaigns within the 17th Congressional District in meetings that the Committee believed constituted appropriate coordination by a local party committee of generic and exempt party activity. The activities being discussed at these meetings consisted of the volunteers' work on the Victory Fund's coordinated campaign within the 17th Congressional District.

The Complaint acknowledges that the Victory Fund's expenditures to SCG should have been treated as contributions to the Committee only if the volunteers participated in activities that were not exempt or generic party activity. To our knowledge, all the Victory Fund volunteers solely participated in generic and exempt activity, and the Commission has not made any showing to the contrary. Rather, the Complaint cites only speculative "evidence" to support its claim that the Victory Fund did things that did not constitute exempt and generic party activity. "Given the apparently close relationship between the Evans campaign and the Victory Fund with regard to the volunteer activities undertaken, it seems likely that at least some of the campaign materials named Mr. Evans." Complaint at 19.

This speculation is premised on an incorrect statement of the law. The Victory Fund volunteers, pursuant to the volunteer exemption at 11 C.F.R. § 100 8(b)(16), would have been permitted to distribute candidate specific materials. Under 11 C.F.R. § 100 8(b)(16), a local committee may pay for the costs of campaign materials

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used in connection with volunteer activities without such costs being considered an expenditure under the FECA. This exemption is available so long as (1) it does not include the cost of any broadcast, newspaper or direct mail (i.e., applicable materials may only be used for volunteer activities), (2) the costs are allocated in accordance with the FECA, and (3) the payment is not made from contributions designated by the donor to be used for a particular candidate. To our knowledge, all of these factors were met and nothing recited in the Complaint appears to us to be evidence to the contrary.

First, the Complaint questions whether the fact that SCG was paid to recruit the volunteers transformed the nature of the volunteer activities. However, the Complaint acknowledges that there are no Commission regulations regarding such an arrangement. Complaint at 20. Payment of volunteer recruitment and management through a consultant is not materially different from payment for such services in-house, and the Victory Fund's use of SCG does not convert the volunteer into a "commercial" arrangement.

Second, the Complaint questions whether the Victory Fund utilized designated funds for its volunteer activities. This assertion is based solely on the fact that nine federal PACs contributed to both the Victory Fund and the Committee, and that "donors to the Victory Fund may have intended their contributions to be used to benefit Lane Evans." Complaint at 21-22 (emphasis added). Even if true, the speculation that Victory Fund donors hoped that their support of the Victory Fund would in some way benefit Congressman Evans does not constitute evidence that the Victory Fund did not "make[] the final decision regarding which candidate are to be benefited by its expenditures." 11 C.F.R. § 100.8(b)(16)(iii). It is axiomatic that donors to a party committee are likely to support the candidates that the party supports. It should not be surprising that donors to the Victory Fund, a local Democratic Party organization, would hope that that organization would support Lane Evans, a Democratic candidate within the Victory Fund's geographical area.¹ Such a

¹ Indeed, prior to the passage of the Bipartisan Campaign Reform Act ("BCRA"), a federal candidate was permitted to raise funds for a party committee conducting generic and exempt activities in its area – including nonfederal funds.

conclusion does not mean that the Victory Fund did not make the final decision regarding the expenditure of such donors' contributions

Finally, the Commission's allegation that the Victory Fund failed to use properly allocated funds to pay for its volunteer activities is based entirely on speculation. This allegation is supported by claims that the Victory Fund "may have used impermissible funds," it seems likely that . . . campaign materials . . . named Mr. Evans,"² and the "Victory Fund may have used DNC funds to pay for campaign materials." Complaint at 19, 23. To our knowledge, none of these speculations are supportable, and therefore they should not be the basis of a Commission action against Lane Evans.

B. Coordinated Party Expenditures by Rock Island and Knox County

The Complaint alleges that certain communications by the Knox County Committee and Rock Island (collectively, the "County Committees") resulted in excessive contributions to the Committee. During 1998, the Committee believed that the County Committees could engage in the activities they undertook without implicating federal campaign laws. Indeed, from the record presented in the Complaint, the majority of the County Committees' activities did in fact constitute generic or exempt activities. Generally, the County Committees appear to have published materials that urged voters to vote for the entire Democratic ticket. In some cases, the County Committees appear to have used Lane Evans, the area's most popular Democrat, as a draw for voters, however, the communications do not appear to have been designed to solely benefit Lane Evans.

Based on the foregoing, we do not believe that the County Committees' expenditures should have been treated as § 441a(d) expenditures in excess of the limits. The amount of the expenditures by the County Committees that could arguably have been attributable to the Committee appear de minimis and certainly less than the \$18,666 § 441a(d) limit that was still available for coordinated party expenditures in connection with the Committees 1998 campaign.

² As previously explained, the Victory Fund could have conducted exempt activities that mentioned Lane Evans.

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The state of the law that existed in 1998 and 2000 was one in which local parties were permitted to conduct activities such as the ones that the Victory Fund and the County Committees conducted. While BCRA has largely changed that law, the law at the time was one in which "the Congress consciously sought to strengthen the role of parties in the electoral process" Advisory Opinion 1978-9.³ Throughout the Complaint, the Commission appears to be applying more recent sentiments and developments in the law. There have been significant changes to the law since the time of the initial complaint in this matter. This case involves local committees who were attempting to build grassroots operations that would benefit the entire Democratic ticket. None of these committees purposely or deliberately violated the FECA. The totality of the spending is generally within the amount of permissible coordinated party expenditures and the Committee respectfully requests that the Commission take no further action regarding this matter.

Very truly yours,


Cassandra F. Lentchner

CFL cec

³ The Senate Report on the 1974 Amendments to the Act clearly outlined the contemplated role of parties under the election law reforms

"Thus parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through party organization

"In addition, parties will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues " S Rept No 93-689, 93d Cong 2d Sess , 8 (1974)